

# Guardian for Restrictive Practices



## What are restrictive practices?

Restrictive practices are methods used to respond to the behaviour of a person with an intellectual or cognitive disability that causes harm, or a serious risk of harm, to the person or others. For example, holding an adult's hands to stop them from hitting themselves is a restrictive practice.

Restrictive practices are regulated in different ways, depending on who they are used by and the context in which they are used. This Fact Sheet focusses on the use of restrictive practices on adults by disability service providers, as regulated by the *Disability Services Act 2006* (Qld) and the *Guardianship and Administration Act 2000* (Qld).

Restrictive practices constitute a serious infringement of the liberty of the person subjected to them and they are therefore subject to a rigorous authorisation process. They can only be used where it is shown that a less restrictive response is not sufficient to protect the person and/or others from harm. Restrictive practices can only be used after consent has been provided and the level of consent needed depends on the type of restrictive practice being used.

Generally, the use of seclusion and/or containment, other than in accordance with a short term approval, must be approved by the Queensland Civil and Administrative Tribunal (**QCAT**). It is important to be aware that a general guardian appointed by QCAT for managing the personal affairs of an adult cannot make decisions regarding the use of restrictive practices. However, a guardian for restrictive practices can make certain decisions regarding the use of restrictive practices.

## What is the difference between a guardian and a guardian for restrictive practices?

A general guardian appointed by QCAT is responsible for managing the personal affairs of an adult who does not have the capacity to do so. This can include making decisions regarding where the adult lives and the services they receive. Although a general guardian is entitled to be consulted on the use of restrictive practices, a general guardian does not have the authority to consent to the use of restrictive practices, with the exception of restricting access to objects. The general guardian would need to be appointed by QCAT as a guardian for restrictive practices in order to be able to make decisions regarding their use.



## **Who can be appointed as a guardian for restrictive practices?**

The criteria that QCAT considers when deciding whether to appoint an individual as a guardian for restrictive practices are essentially the same as those required for a general guardian (see guardianship factsheet). The person must be at least 18 years of age and not be a paid carer or health provider for the adult. QCAT will also take into account the adult's wishes, so far as they can be ascertained, as well as the wishes of family members and interested parties.

## **What decisions can a guardian for restrictive practices make?**

A guardian for restrictive practices can authorise the use of chemical, physical and mechanical restraint and restricting access to objects (see Restrictive Practices Fact Sheet). The guardian for restrictive practices does not have the authority to consent to the use of containment and seclusion except where it is for the provision of respite/community access services.

## **What are respite/community access services?**

Disability respite/community access services are:

1. Services provided to an adult with an intellectual or cognitive disability who does not receive disability services or NDIS supports or services other than respite services or community access services from a relevant service provider; and
2. Funded as respite services by the department or the Commonwealth under the NDIS.

The guardian for restrictive practices can consent to containment where a request is made by a respite service provider for the period of the respite services. However, if the adult receives full time disability services the guardian for restrictive practices cannot provide consent.

## **What is a positive behaviour support plan?**

A positive behaviour support plan (**PBSP**) is a plan, developed for and with an adult with intellectual or cognitive disability, that describes the strategies that are to be used to meet the adult's needs, support their development of skills, maximise their opportunities and reduce the intensity, frequency and duration of behaviours that may lead to the use of restrictive practices. A PBSP must describe behaviours of concern, including the triggers for the behaviour, outline positive strategies to be used before restrictive practices are applied and outline safeguards to be applied to protect the adult. The objective of the PBSP is to reduce, to the greatest extent, the need for the use of restrictive practices.

## Consent by guardian type

<b>Restrictive practice</b>	<b>Guardian for personal affairs (general)</b>	<b>Guardian for restrictive practices</b>
Seclusion	No, cannot consent	In limited circumstances, including short-term approvals (up to six months) by the Public Guardian
Containment	No, cannot consent	In limited circumstances, including short-term approvals (up to six months) by the Public Guardian
Chemical restraint	No, cannot consent	Yes, can consent in compliance with a PBSP (up to 12 months) or short-term approval (up to six months) by the Public Guardian
Physical restraint	No, cannot consent	Yes, can consent
Mechanical restraint	No, cannot consent	Yes, can consent
Restricting access to objects	Yes, can consent	Yes, can consent

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